

AMENDED IN ASSEMBLY SEPTEMBER 4, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 1061

**Introduced by Committee on Revenue and Taxation (Senators
Cedillo (Chair), Alpert, Bowen, and Burton)**

February 27, 2003

An act to amend Sections 2205 and 5008.6 of the Corporations Code, to amend Section 7073.8 of the Government Code, and to amend Sections ~~23041~~ 17941, 23041, 23701h, 23701x, and 25111 of, and to add Sections 18405.1, 25113, and 25116 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1061, as amended, Committee on Revenue and Taxation.
Suspended corporations: corporation taxes: water's-edge.

(1) The Corporations Law allows the Secretary of State to suspend the powers, rights, and privileges of a corporation, if the corporation fails to pay taxes or fails to file tax returns, annual returns, or certain other information returns. The Corporations Law precludes a suspended corporation from filing an application for tax-exempt status or amending its articles of incorporation to perfect its tax-exempt application.

This bill would permit a corporation to file an application for tax-exempt status even if the status of the corporation is suspended. This bill would also allow a suspended corporation to amend its articles of incorporation to perfect its application for tax-exempt status.

(2) *The Corporation Tax Law specifies the types of title-holding companies that are exempt from the taxes imposed by that law.*

This bill would provide that for purposes of those exemptions, the term “corporation” includes limited liability companies, as specified.

(3) The Corporation Tax Law allows corporations to elect whether their income is determined on a “water’s-edge” basis or on a worldwide unitary basis. The election to report income on a water’s-edge basis is made by contract between the taxpayer and the Franchise Tax Board. The contract requirements allow no relief for errors, and do not allow the perfecting of invalid water’s-edge elections. Electors who fail to comply with the contractual requirements for making a water’s-edge election forfeit their water’s-edge election, thereby causing their income to be determined on a worldwide unitary basis.

This bill would revise water’s-edge election procedures by, among other things, providing that elections made under current law may be perfected, and by providing, for taxable years beginning on or after January 1, 2003, that elections be made by statutory election, as provided, rather than by contract.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2205 of the Corporations Code is
2 amended to read:

3 2205. (a) A corporation that (1) fails to file a statement
4 pursuant to Section 1502 for an applicable filing period, (2) has not
5 filed a statement pursuant to Section 1502 during the preceding 24
6 months, and (3) was certified for penalty pursuant to Section 2204
7 for the same filing period, is subject to suspension pursuant to this
8 section rather than to penalty pursuant to Section 2204.

9 (b) When subdivision (a) is applicable, the Secretary of State
10 shall mail a notice to the corporation informing the corporation
11 that its corporate powers, rights, and privileges will be suspended
12 after 60 days if it fails to file a statement pursuant to Section 1502.

13 (c) After the expiration of the 60-day period without any
14 statement filed pursuant to Section 1502, the Secretary of State
15 shall notify the Franchise Tax Board of the suspension and mail a
16 notice of the suspension to the corporation, and thereupon, the

1 corporate powers, rights, and privileges of the corporation are
2 suspended, except for the purpose of filing an application for
3 exempt status or amending the articles of incorporation as
4 necessary either to perfect that application or to set forth a new
5 name.

6 (d) A statement pursuant to Section 1502 may be filed
7 notwithstanding suspension of the corporate powers, rights, and
8 privileges pursuant to this section or Section 23301, 23301.5, or
9 23775 of the Revenue and Taxation Code. Upon the filing of a
10 statement pursuant to Section 1502 by a corporation that has
11 suffered suspension pursuant to this section, the Secretary of State
12 shall certify that fact to the Franchise Tax Board and the
13 corporation may thereupon be relieved from suspension unless the
14 corporation is held in suspension by the Franchise Tax Board by
15 reason of Section 23301, 23301.5, or 23775 of the Revenue and
16 Taxation Code.

17 SEC. 2. Section 5008.6 of the Corporations Code is amended
18 to read:

19 5008.6. (a) A corporation that (1) fails to file a statement
20 pursuant to Section 6210, 8210, or 9660 for an applicable filing
21 period, (2) has not filed a statement pursuant to Section 6210,
22 8210, or 9660 during the preceding 24 months, and (3) was
23 certified for penalty pursuant to Section 6810, 8810, or 9690 for
24 the same filing period, shall be subject to suspension pursuant to
25 this section rather than to penalty under Section 6810 or 8810.

26 (b) When subdivision (a) is applicable, the Secretary of State
27 shall mail a notice to the corporation informing the corporation
28 that its corporate powers, rights, and privileges will be suspended
29 60 days from the date of the notice if the corporation does not file
30 the statement required by Section 6210, 8210, or 9660.

31 (c) If the 60-day period expires without the delinquent
32 corporation filing the required statement, the Secretary of State
33 shall notify the Franchise Tax Board of the suspension, and mail
34 a notice of the suspension to the corporation. Thereupon, except
35 for the purpose of filing an application for exempt status or
36 amending the articles of incorporation as necessary either to
37 perfect that application or to set forth a new name, the corporate
38 powers, rights, and privileges of the corporation are suspended.

39 (d) A statement required by Section 6210, 8210, or 9660 may
40 be filed, notwithstanding suspension of the corporate powers,

rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under Section 6210, 8210, or 9660, by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board because of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

SEC. 3. Section 7073.8 of the Government Code is amended to read:

7073.8. (a) The agency shall designate up to two Manufacturing Enhancement Areas, as defined by Section 17053.47 of the Revenue and Taxation Code, requested by the governing boards of cities each of which shall meet at least the following criteria:

(1) The unemployment rate in the county in which the applicant is located has been at least three times the state average from 1990 to 1995, inclusive.

(2) The applicant city is, or portions of the city are, designated a federal enterprise community or empowerment zone pursuant to Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code.

(3) The applicant city is located in a Border Environment Cooperation Commission region as specified in Section 3473 of Title 19 of the United States Code.

(4) At least one of the following:

(A) The designated area has grown by less than 5 percent in population per year for each of the two years preceding the application date.

(B) The median household income for the designated area is under twenty-five thousand dollars (\$25,000) per year.

(C) The designated area has a population of under 20,000 persons according to the 1990 federal census.

(D) The designated area is located in a rural community.

(5) An audit of the program shall be made at the end of the 5th and 10th year of its operation by the Trade and Commerce Agency with the cooperation of the local governing board. The audit shall be used to determine how effective the designation has been in attracting manufacturing facilities and creating new employment

opportunities. Continuation of the designation is contingent on evidence of success of the program.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any Manufacturing Enhancement Area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to this chapter.

(c) The designation as a Manufacturing Enhancement Area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

SEC. 4. *Section 17941 of the Revenue and Taxation Code is amended to read:*

17941. (a) For each taxable year beginning on or after January 1, 1997, every limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) (1) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated as its final return, the Franchise Tax Board shall notify the taxpayer that the annual tax shall continue to be due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 17356 or 17455 of the Corporations Code.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(d) For purposes of this section, "limited liability company" means any organization, *other than a limited liability company that is exempt from the tax and fees imposed under this chapter pursuant to Section 23701h or Section 23701x*, that is formed by

1 one or more persons under the law of this state, any other country,
2 or any other state, as a “limited liability company” and that is not
3 taxable as a corporation for California tax purposes.

4 *SEC. 5.* Section 18405.1 is added to the Revenue and Taxation
5 Code, to read:

6 18405.1. (a) Notwithstanding Section 18405, the Franchise
7 Tax Board may, in its discretion, permit elections made under
8 Section 25111 to be perfected during the period of limitations
9 prescribed under Sections 19057 and 19306 for the applicable
10 taxable year. The statute of limitations of all taxpayers in a
11 water’s-edge group whose taxable year falls, in whole or in part,
12 within the period of the election shall remain open to receive
13 adjustments, under claim or deficiency, consistent with that
14 perfection of the election.

15 (b) Subdivision (a) does not apply to the 1988 taxable year of
16 any taxpayer whose water’s-edge election has been perfected
17 pursuant to Section 18405.

18 ~~*SEC. 5.*~~

19 *SEC. 6.* Section 23041 of the Revenue and Taxation Code is
20 amended to read:

21 23041. “Taxable year” means:

22 (a) For the purposes of the tax imposed under Chapter 2
23 (commencing with Section 23101), the calendar year, or the fiscal
24 year for which the tax is payable.

25 (b) For the purposes of the tax imposed under Chapter 1.5
26 (commencing with Section 23081), Chapter 3 (commencing with
27 Section 23501), or Chapter 4 (commencing with Section 23701),
28 the calendar year or the fiscal year upon the basis of which the net
29 income is computed.

30 (c) For purposes of the tax imposed under Chapter 2.5
31 (commencing with Section 23400), (1) in the case of a taxpayer
32 subject to the tax imposed under Chapter 2 (commencing with
33 Section 23101), the calendar year or the fiscal year for which the
34 tax is payable and (2) in the case of a taxpayer subject to the tax
35 imposed under Chapter 3 (commencing with Section 23501) or
36 Chapter 4 (commencing with Section 23701), the calendar or
37 fiscal year upon the basis of which the net income is computed.

38 (d) For the purpose of the taxes imposed under this part, a
39 period of 12 months or less.

(e) When referring to a calendar or fiscal year beginning before January 1, 2000, upon the basis of which the net income is computed, the term “taxable year” shall mean “income year,” as defined in subdivision (a) of Section 23042.

~~SEC. 6.~~

SEC. 7. Section 23701h of the Revenue and Taxation Code is amended to read:

23701h. (a) A corporation described in Section 501(c)(2) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) *Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(2) of the Internal Revenue Code under this section, the term “corporation” includes a limited liability company that is classified as a partnership or as a disregarded entity.*

(2) *A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with Section 17941) of Part 10.*

~~SEC. 8. Section 23701x of the Revenue and Taxation Code is amended to read:~~

23701x. (a) A corporation or trust described in Section 501(c)(25) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) *Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(25) of the Internal Revenue Code under this section, the term “corporation” includes a limited liability company that is classified as a partnership or as a disregarded entity.*

(2) *A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with Section 17941) of Part 10.*

~~SEC. 9. Section 25111 of the Revenue and Taxation Code is amended to read:~~

25111. (a) For taxable years beginning before January 1, 2003, the making of a water’s-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water’s-edge group and

1 which is subject to tax under this part makes the election. A single
2 taxpayer that is engaged in more than one business activity subject
3 to allocation and apportionment as provided in Article 2
4 (commencing with Section 25120) of Chapter 17 may make a
5 separate election for each business. The form and manner of
6 making the water's-edge election shall be prescribed by the
7 Franchise Tax Board. Each contract making a water's-edge
8 election shall be for an initial term of 84 months, except as
9 provided in subdivision (b). Each contract shall provide that on the
10 anniversary date of the contract or any other annual date specified
11 by the contract a year shall be added automatically to the initial
12 term unless notice of nonrenewal is given as provided in
13 subdivision (d). An affiliated corporation that is a member of the
14 water's-edge group and subsequently becomes subject to tax under
15 this part or is a nonelecting taxpayer that is subsequently proved
16 to be a member of the water's-edge group pursuant to a Franchise
17 Tax Board audit determination, as evidenced by a notice of
18 deficiency proposed to be assessed or a notice of tax change, shall
19 be deemed to have elected.

20 No water's-edge election shall be made for a taxable year
21 beginning prior to January 1, 1988.

22 (b) A water's-edge election may be terminated by a taxpayer
23 prior to the end of the 84-month period if either of the following
24 occurs:

25 (1) The taxpayer is acquired directly or indirectly by a
26 nonelecting entity which alone or together with those affiliates
27 included in its combined report is larger than the taxpayer as
28 measured by equity capital.

29 (2) With the permission of the Franchise Tax Board.

30 (c) In granting a change of election, the Franchise Tax Board
31 shall impose any conditions that are necessary to prevent the
32 avoidance of tax or to clearly reflect income for the period the
33 election was, or was purported to be, in effect. These conditions
34 may include a requirement that income, including dividends paid
35 from income earned while a water's-edge election was in effect,
36 which would have been included in determining the income of the
37 taxpayer from sources within and without this state pursuant to
38 Section 25101 but for the water's-edge election shall be included
39 in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

(f) To the extent that a taxpayer would have been required to file on a water's-edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to a water's-edge election made in a prior year under this section, the terms of this section no longer apply and that election shall be deemed to have been made under the terms of Section 25113. However, the commencement date of the election made in a prior year under this section shall continue to be treated as the commencement date of the water's-edge election period for purposes of applying the provisions of Section 25113.

~~SEC. 7.—~~

SEC. 10. Section 25113 is added to the Revenue and Taxation Code, to read:

25113. (a) Except as provided in subdivision (f), for taxable years beginning on or after January 1, 2003, the election provided for in Section 25110 shall be made on an original, timely filed return for the year of the election. The election will be considered valid if both of the following conditions are satisfied:

(1) The tax is computed in a manner consistent with a water's-edge election.

(2) A written notification of election is filed with the return on a form prescribed by the Franchise Tax Board. Pursuant to regulations promulgated under this section, the Franchise Tax Board may accept the filing of other objective evidence that supports the conclusion that a water's-edge election was intended in lieu of notification on the designated form.

(b) Except as otherwise provided, a water's-edge election shall be effective only if made by every member of the self-assessed combined reporting group that is subject to taxation under this part.

(1) An election made on a group return of a self-assessed combined reporting group shall constitute an election by each taxpayer member included in that group return, unless one of those taxpayers files a separate return in which no election is made and paragraph (2) does not apply.

(2) A taxpayer that fails to make an election on its own timely filed original return shall be deemed to have elected if either of the following apply:

(A) It has a parent corporation that is an electing taxpayer that included the income and apportionment factors of the nonelecting taxpayer in the self-assessed combined reporting group reflected in the electing parent's timely filed original return, including a group return.

(B) The income and apportionment factors of the nonelecting taxpayer is reflected in the self-assessed combined reporting group of a timely filed original return of an electing taxpayer, and the notification of election filed by the electing taxpayer pursuant to paragraph (2) of subdivision (a) is signed by an officer or other authorized agent of either a parent corporation of the nonelecting taxpayer or another corporation with authority to bind the nonelecting taxpayer to an election.

(3) For purposes of this subdivision, a "parent corporation" of the taxpayer is a corporation that owns or constructively owns stock possessing more than 50 percent of the voting power of the taxpayer as determined under subdivisions (e) and (f) of Section 25105.

(4) If a corporation that is a member of a combined reporting group is not itself subject to taxation under this part in the year for which the water's-edge election is made, but subsequently becomes subject to taxation under this part, that corporation shall be deemed to have elected with the other taxpayer members of the combined reporting group.

(5) A taxpayer that is engaged in more than one apportioning trade or business as defined in paragraph (6) of subdivision (d) of Section 25128 may make a separate election for each apportioning trade or business.

(c) A water's-edge election shall remain in effect or be terminated in accordance with this subdivision.

(1) Except as otherwise provided in this subdivision, if one or more electing taxpayer members of a combined reporting group

1 later become disaffiliated or otherwise cease to be included in the
2 combined reporting group, the water's-edge election shall remain
3 in effect as to both the departing taxpayer members and any
4 remaining taxpayer members.

5 (2) If an electing taxpayer and a nonelecting taxpayer become
6 members of a new unitary affiliate group, the nonelecting taxpayer
7 shall be deemed to have elected if the value of the total business
8 assets of the electing taxpayer, and its component unitary group,
9 if any, is larger than the value of the total business assets of the
10 nonelecting taxpayer, and its component unitary group, if any.
11 Otherwise, the water's-edge election shall be automatically
12 terminated at the time the electing members become part of the
13 combined report. For purposes of applying paragraphs (9) and
14 (10), the commencement date of the deemed election shall be the
15 same as the commencement date of the electing taxpayers.

16 (3) If taxpayers filing under water's-edge elections with
17 different commencement dates become members of a new unitary
18 affiliate group, the earliest election date shall be deemed to apply
19 to all electing taxpayers if the total business assets of the earlier
20 electing taxpayer, and its component unitary group, if any, is larger
21 than the value of the total business assets of the later electing
22 taxpayer, and its component unitary group, if any. Otherwise, the
23 later election commencement date shall apply to all electing
24 taxpayers.

25 (4) (A) If a taxpayer with an election that has been terminated
26 under paragraph (9) or (10) becomes a member of a new unitary
27 affiliate group that includes another electing or nonelecting
28 taxpayer not affected by those paragraphs, any water's-edge
29 election of the other taxpayer member, if applicable, shall
30 terminate, and any restrictions on making a new water's-edge
31 election, relating to an election terminated under those paragraphs,
32 shall apply to all taxpayer members of the new unitary affiliate
33 group if the total business assets of the taxpayer with the
34 terminated election, and its component unitary group, if any, is
35 larger than the other taxpayer, and its component unitary group, if
36 any. Otherwise, paragraph (2) shall apply, if applicable. If
37 paragraph (2) does not apply, all taxpayer members of the new
38 unitary affiliate group will be treated as nonelecting taxpayers that
39 are not subject to any restrictions on making a new water's-edge
40 election.

1 (B) If two nonelecting taxpayers with different termination
2 dates under paragraph (9) or (10) become members of a new
3 unitary affiliate group, the earliest termination date shall be
4 deemed to apply to all nonelecting taxpayers, as well as any
5 restrictions on making a new water's-edge election relating to that
6 termination, if the total business assets of the earlier terminating
7 taxpayer, and its component unitary group, if any, is larger than the
8 value of the total business assets of the later terminating taxpayer,
9 and its component unitary group, if any. Otherwise, the later
10 termination date, and the related restrictions on making a new
11 water's-edge election, shall apply to all taxpayer members of the
12 new unitary affiliate group.

13 (5) (A) Except as provided in subparagraph (B), if one or more
14 electing taxpayers did not report their income and apportionment
15 factors as members of a combined reporting group with one or
16 more nonelecting taxpayers, and, pursuant to a Franchise Tax
17 Board audit determination, the nonelecting taxpayers, are properly
18 in the same combined reporting group as the electing taxpayers,
19 the water's-edge election of the electing taxpayers shall remain in
20 effect and the nonelecting taxpayers shall be deemed to have made
21 a water's-edge election. The commencement date of the deemed
22 water's-edge election shall be the same as the commencement date
23 of the electing taxpayers.

24 (B) Subparagraph (A) shall not apply if the value of total
25 business assets of the electing taxpayers does not exceed the value
26 of total business assets of the nonelecting taxpayers. In that event,
27 the water's-edge election of each electing taxpayer is terminated
28 as of the date the nonelecting taxpayers are, pursuant to the audit
29 determination described in subparagraph (A), properly included in
30 the same combined reporting group as the electing taxpayers.

31 (C) For purposes of applying the business asset test of this
32 paragraph, the term "business assets" shall have the same
33 meaning as subparagraph (A) of paragraph (6), except that the
34 business assets of other members of the unitary affiliate group that
35 are not taxpayers shall not be taken into account.

36 (D) Notwithstanding subparagraph (A), nonelecting taxpayers
37 may not be deemed to have made a water's-edge election if the
38 Franchise Tax Board audit determination described in
39 subparagraph (A) is withdrawn or otherwise overturned.



(6) For purposes of paragraphs (2) to (5), inclusive, the following shall apply:

(A) “Business assets” are assets, including intangible assets, other than stock of a member of the unitary affiliate group, which are used in the conduct of the business of the unitary affiliate group or would produce business income to the unitary affiliate group, if an election were not in place, if the assets were sold. Business assets shall be valued at net book value.

(B) The phrase “unitary affiliate group” refers to all of those corporations that would constitute a unitary group if a water’s-edge election were not made.

(C) The phrase “new unitary affiliate group” refers to a unitary affiliate group that is created by a new affiliation of two or more corporations, or by the addition of one or more new members to an existing unitary affiliate group.

(D) The phrase “component unitary group” means that portion of a group of corporations that have become members of a new unitary affiliate group that were members of their own respective unitary affiliate group prior to entering the new unitary affiliate group, disregarding any corporations that did not become part of the new unitary group.

(7) In the application of paragraphs (2) to (4), inclusive, a series of acquisitions as steps of a single transaction shall be aggregated as a single change of membership.

(8) In the event of a merger or consolidation, the water’s-edge status and election commencement date or termination date of the surviving corporation shall be consistent with the result that would have been obtained under paragraphs (2) to (4), inclusive, if the surviving corporation had acquired the stock of the transferor corporation.

(9) A water’s-edge election may be terminated without the consent of the Franchise Tax Board after it has been in effect for at least 84 months. The termination shall be made on an original, timely filed return for the first year in which the water’s-edge election is to be terminated. To be effective, the termination shall be made by every taxpayer that is a member of the water’s-edge group in the same manner as the election provided under subdivisions (a) and (b).

(10) A water’s-edge election may be terminated before the 84-month period described in paragraph (9) has elapsed, but only

1 with the consent of the Franchise Tax Board. A request for
2 termination shall be made at the time and in the manner specified
3 by the Franchise Tax Board. The request may be granted for good
4 cause. For purposes of this section, good cause shall have the same
5 meaning as specified in Treasury Regulations Section
6 1.1502-75(c).

7 (11) Except for deemed elections as provided in paragraphs (2),
8 (4), and (5), if a water's-edge election is terminated under
9 paragraph (9) or (10), another election may not be made under this
10 section for any taxable year that begins within the 84-month period
11 following the last day of the election period that was terminated.
12 The Franchise Tax Board may waive the application of this
13 prohibition period for good cause.

14 (12) A water's-edge election shall remain in effect until
15 terminated.

16 (d) For purposes of this section, the following shall apply:

17 (1) A "combined reporting group" means those corporations
18 whose income and apportionment factors are properly considered
19 pursuant to this chapter in computing the income of the individual
20 taxpayer that is derived from or attributable to sources within this
21 state, taking into account a valid water's-edge election.

22 (2) A "group return" refers to the single return which taxpayer
23 members of a combined reporting group may elect by contract to
24 file, in the form and manner prescribed by the Franchise Tax
25 Board, in lieu of filing their own respective returns.

26 (3) A "self-assessed combined reporting group" means that
27 group of corporations whose income and apportionment factors
28 are reflected in a combined report prepared pursuant to this chapter
29 in a timely filed return, taking into account the effects of a
30 purported water's-edge election, whether or not the membership
31 of the corporations in that combined report was correctly
32 determined.

33 (e) The Franchise Tax Board may prescribe any regulations as
34 may be necessary or appropriate to carry out the purposes of this
35 section.

36 (f) To the extent that a taxpayer would have been required to
37 file on a water's-edge basis in its first taxable year beginning on
38 or after January 1, 2003, pursuant to a water's-edge election made
39 in a prior year under Section 25111, the terms of Section 25111
40 shall not apply and the election shall be deemed to have been made

1 under the terms of this section. However, the commencement date
2 of the election made in a prior year under Section 25111 shall
3 continue to be treated as the commencement date of the
4 water's-edge election period for purposes of applying this section.

5 ~~SEC. 8.~~

6 *SEC. 11.* Section 25116 is added to the Revenue and Taxation
7 Code, to read:

8 25116. Notwithstanding paragraph (1) of subdivision (a) of
9 Section 23051.5, when provisions of this article refer to provisions
10 of the Internal Revenue Code that do not otherwise apply for
11 purposes of Part 10.2 (commencing with Section 18401) or this
12 part, the term "Internal Revenue Code" means Title 26 of the
13 United States Code, including all amendments thereto, as in effect
14 for federal purposes for the taxable period, except as otherwise
15 specifically provided in this article.

16 ~~SEC. 9.~~

17 *SEC. 12.* This act provides for a tax levy within the meaning
18 of Article IV of the Constitution and shall go into immediate
19 effect.

